JD(SF)–61–06
Wallingford, CT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

REGENCY HOUSE OF WALLINGFORD, INC.

and

INTERNATIONAL CHEMICAL WORKERS
UNION COUNCIL/UFCW, LOCAL 560C

Cases 34-CA-9895R
34-CA-9915
34-CA-10075
34-CA-10101

Margaret A. Lareau, Esq. and
Quesiyah S. Ali, Esq., for the General Counsel

Randall Vehar, Esq. of Akron, Ohio
for the Charging Party

Richard M. Howard, Esq. and
David S. Greenhaus, Esq. (Kaufman, Schneider & Bianco, LLP)
of Jericho, New York for the Respondent

DECISION

Statement of the Case

JOHN J. MCCARRICK, Administrative Law Judge. This case was originally tried in Hartford, Connecticut on June 11 and 12, and July 9, 2002, before Administrative Law Judge Howard Edelman based upon the Order consolidating cases, amended consolidated complaint and notice of hearing issued on May 17, 2002, by the Regional Director for Region 34. The amended consolidated complaint[1] alleges that Regency House of Wallingford, Inc., (Respondent), violated Section 8(a)(1) and (5) of the Act by numerous acts of denigrating International Chemical Workers Union Council/UFCW, Local 560C, (Union), by soliciting employee grievances, by bypassing the Union and dealing directly with employees, by refusing to furnish the Union with requested information, by withdrawing recognition of the Union, by refusing to bargain with the Union concerning a successor collective bargaining agreement and by making numerous unilateral changes. Respondent filed a timely answer to the amended consolidated complaint denying any wrongdoing.

[1] At the hearing, counsel for the General Counsel made a motion to amend the complaint by adding to the complaint subparagraphs 12(f) and (g) that by letter dated May 4, 2001, Respondent by Viola, blamed the Union for the rescission of wages and for failing to represent the interests of the employees in the unit; by letter dated May 10, 2001, Respondent, by Viola held out the Union and its unit vice president as a wrongdoer and as failing to represent the interests of the employees in the unit. The amendment was granted.

On January 24, 2003 Judge Edelman issued his decision. Respondent and the Charging Party filed timely exceptions. On May 31, 2006, the Board issued its Order remanding proceedings[2] setting aside the judge's January 24, 2003 decision and ordered that the case be remanded to the Chief Administrative Law Judge for reassignment to a different administrative law judge.[3] On June 8, 2006 the Chief Administrative Law Judge issued an order reassigning case and assigned this case to me to "review the record" and issue a "reasoned decision."

Findings of Fact

Upon the entire record herein, including the original, supplemental and reply briefs from the General Counsel,[4] the Union and Respondent,[5] I make the following findings of fact.

I. Jurisdiction

Respondent admitted it is a Connecticut corporation, with facilities located in Wallingford, Connecticut, where it is engaged in the operation of a nursing home. Annually, Respondent in the course of its business operations derived gross revenues in excess of $100,000 and purchased and received at its facility goods valued in excess of $5000 directly from points located outside the State of Connecticut.

Based upon the above, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

Respondent admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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[2] 347 NLRB No. 15 (May 31, 2006)

[3] In its Order, the Board noted that the new judge was authorized to rely on Judge Edelman's demeanor-based credibility decisions to the extent they were consistent with the weight of the evidence.

[4] In her brief to Judge Edelman, counsel for the General Counsel moved to amend the transcript in accordance with Attachment A to the brief. There having been no objection, the motion is granted.

[5] In its supplemental brief, counsel for Respondent contends that there was error in Judge Edelman's ruling excluding evidence of employees' subjective reasons for dissatisfaction with the Union and that the record should be reopened to take this evidence. Initially, I have been given no authority by the Board to reconvene the hearing in this case for any purpose other than resolving credibility. See 347 NLRB No. 15 at fn. 3. Further, any arguments that Judge Edelman demonstrated bias toward Respondent in making evidentiary rulings is mooted since the case has been reassigned to another judge. As noted below, I have followed Judge Edelman's credibility findings, after an independent review of the record, where they are supported by the weight of the evidence. Moreover, for the reasons discussed below, it is unnecessary to consider subjective or objective employee sentiments concerning the Union.

III. The Alleged Unfair Labor Practices

A. The Facts

Respondent operates a nursing home in Wallingford, Connecticut. National Health Care Associates/National Health provides management and human relations services for Respondent and other nursing homes in Connecticut, New York and New Jersey. William Viola (Viola) was Respondent's Administrator. Patricia 'Trish' Thomas (Thomas) was Human Resources Director for National Health and Gina Pruhenski (Pruhenski) was National Health's Human Resources Representative. Respondent admitted that Viola, Thomas and Pruhenski were agents of Respondent within the meaning of Section 2(13) of the Act. In addition, I find that Richard Howard (Howard) and Arthur Kaufman (Kaufman) were agents of Respondent while acting in their capacity as counsel for Respondent.

The Union was certified on October 10, 1997 as the exclusive collective-bargaining representative of Respondent's employees in the following unit:

> All full-time and regular part-time registered nurses, licensed practical nurses and service and maintenance employees employed by Respondent, including certified nursing assistants, physical therapy aides, dietary aides, and housing and laundry employees; but excluding RN supervisors, office clerical employees, cooks, and guards, other professional employees and other supervisors as defined in the Act.

John Mendolusky (Mendolusky) was the Union's International Representative and Lori Carver (Carver) was the Union Local 560C Vice President. Respondent and the Union entered into a collective bargaining agreement covering unit employees effective from February 19, 1999 to February 19, 2002.

1. Compliance with the Board Order

On February 21, 2001 administrative law judge Michael Marchionese issued his decision in Case 34-CA-9269 finding that Respondent violated Section 8(a)(1) and (5) of the Act by granting wage increases to bargaining unit employees and ordered Respondent to rescind the wage increases upon the Union's request.

On February 27, 2001, after receiving Judge Marchionese's decision, bargaining unit members voted to rescind Respondent's unlawful wage increases. Thereafter, Carver orally requested Respondent's Administrator Viola to rescind the wage increases. Subsequently, by letter dated March 19, 2001,[6] Carver advised Viola that the Union wanted the wage increases rescinded by March 26, 2001 unless Respondent agreed to bargain over employee wages by March 21, 2001. In response, on March 20, 2001 Respondent's counsel, Richard Howard (Howard) sent a letter to Carver stating that Respondent intended to comply with Judge Marchionese's decision but that it would not bargain about employee wages.[7] Howard stated further:

> The union's position on the recission of the hiring rate appears self-defeating and we urge you to reconsider. There is simply no reason to hurt the people receiving the new

[6] General Counsel's exhibit 3.
[7] General Counsel's exhibit 4.

> rate, just because the Administrative Law Judge did not rule exactly as you desired. Regency will not harm its employees; the union should not harm its members. With all due respect, you are dealing with peoples' lives; you should not cavalierly take their money away from them. Regency is not happy with the Administrative Law Judge's decision, but will abide by the same. There is no reason the union cannot do likewise and avoid hurting their own members.
>
> If you insist upon the rescission of the past increases, in accordance with the aforesaid decision, Regency will comply.
>
> It is entirely up to you whether you choose to harm your own members. In the interest of Regency's employees and residents, I hope you will reconsider.

On March 27, 2001, Carver replied by letter[8] to Viola chastising Respondent for placing the blame on the Union for seeking rescission of the wage increases Judge Marchionese found unlawful, citing Judge Marchionese's admonition to Respondent not to "cast blame on the Union for the outcome, or otherwise attempting to cause employee disaffection from the Union."[9]

On April 6, 2001 Howard, on behalf of Respondent, replied to Carver.[10] Howard denied that Respondent sought to blame the Union or seek employee dissatisfaction for the remedy of wage rescission. Howard then claimed the Union itself was creating employee dissatisfaction, alleging only 20 percent of the unit voted for rescission. Howard then noted he was enclosing a petition signed by 30 of Respondent's employees requesting no rescission of the unlawful wage increase. Howard added,

> It is peculiar that while most unions pride themselves on helping the members they represent, your union has chosen as its legacy to punish it member by having their wages reduced.

On April 9, 2001 the Board issued an Order in Case 34-CA-9269 adopting Judge Marchionese's decision.

On April 12, 2001 Mendolusky wrote[11] to both Howard and Viola demanding rescission of the wage increases by April 16, 2001.

On April 20, 2001, despite having recognized Mendolusky as Local 560C's agent since 2000, Viola wrote to Mendolusky contesting his authority to seek rescission of wages on behalf of Local 560C. [12] Accordingly, on April 24, 2001 Carver wrote[13] to Viola demanding that the unlawful wage increases be rescinded effective April 16, 2001.

On April 25, 2001 Viola posted a memo to all employees,[14] attaching a copy of Carver's letter of April 24, 2001 demanding wage rescission. The memo stated:

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[8] General Counsel's exhibit 5.
[9] General Counsel's exhibit 34.
[10] General Counsel's exhibit 6.
[11] General Counsel's exhibits 7 and 8.
[12] General Counsel's exhibit 9.
[13] General Counsel's exhibit 10.
[14] General Counsel's exhibit 11.

> As you are aware, the National Labor Relations Board ("NLRB") issued a decision that found Regency House had violated the National Labor Relations Act by granting wage increases to certain employees without first notifying and discussing the increases with the Union. The NLRB ordered that as the remedy, Regency House would agree not to do this again in the future, and if the Union, at its option, requested Regency House would rescind the wage increase. The other day your Union requested that we rescind this wage increase and lower the hourly rates fort those employees who got the increase. Attached is the letter, which Regency House received from Lori Carver, your Union Vice President.
>
> Prior to implementing, we will discuss this further with our counsel and keep you advised.

Again on April 30, 2001, Viola attempted to avoid complying with the remedy in the Board's April 9, 2001 order. In his letter[15] to Carver, Viola said in pertinent part:

> Nevertheless, I would like to make one last attempt at resolving this matter with the Union without resorting to cutting wages and hurting the employees of Regency House.
>
> Accordingly, I propose that we do not cut any wages, and that as an alternative; we agree to reopen our current contract and commence bargaining for a new collective bargaining agreement. Under this proposal, the Union will be free to negotiate for any changes and improvements that the Union desires including wages, benefits and other terms and conditions of employment. We would begin negotiations immediately and meet regularly to accomplish this result. In return the Union would agree not to reduce the wages of the affected employees.
>
> I hope you will accept my proposal. I will delay implementing the hourly wage reduction until I hear from you.

In response, on May 2, 2001 Carver wrote to Viola agreeing to hold the rescission of wages in abeyance in order to consider his written offer to negotiate of April 30.[16] Carver set forth five conditions Respondent had to meet in order for the Union to agree to bargain.

By letter dated May 4, 2001,[17] Viola rejected the Union's conditions for bargaining stating, "If you draw such 'lines in the sand' you will only cause your members, the employees of this facility, to suffer." Viola then said he was fixing no blame but said, "The inescapable fact is that the rescission of increased wage rates and bonuses is neither the choice of Regency House nor the majority of our employees."

On May 6, 2001, Mendolusky wrote to Howard and put Respondent on notice that it had until May 11, 2001 to grant wage increases the Union had demanded in its May 2, 2001 letter or to rescind the wage increases effective May 14, 2001.[18] At the same time on May 6, 2001, both Mendolusky and Carver wrote a letter to Howard asking for clarification of issues related to Respondent's offer to bargain.[19]

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[15] General Counsel's exhibit 12.
[16] General Counsel's exhibit 13.
[17] General Counsel's exhibit 14.
[18] General Counsel's exhibit 15.
[19] General Counsel's exhibit 17.

On May 10, 2001, Viola responded to the Mendolusky-Carver letter of May 6, 2001 and said in part [20]

> Your attempt to inflame an already tense situation accomplishes nothing and I choose not to be involved in those tactics. . . . However, I should point out that as someone who is the representative of the Regency House employees, you have an obligation to serve the interests of all the employees, not just the more senior employees of which you are one . . . As you know, the National Labor Relations Board gave the Union the right to insist that the wage increases given to the employees with less than five (5) years seniority be rescinded. . . . Accordingly, Regency will implement your request to rescind the wages of the affected employees. However, we should all be cognizant of the fact that this rescission presents an unexpected hardship for many of our employees who depend on a specific income level. Therefore, I am requesting that you agree to have the rescission announced now but effective July 1, in order to provide the affected employees adequate notice and opportunity to make necessary adjustments to their budgets . . . Be assured that when negotiations commence . . . Regency will make reinstitution of the wage increase, with retroactivity, a high priority.[21]

On May 11, 2001 Carver wrote to Viola and demanded that the wage increases be rescinded as of May 14, 2001.[22] The wage rescission was made on May 20, 2001 and appeared in the first paychecks on May 31, 2001.

2. Bargaining for a Successor Collective Bargaining Agreement

On May 22, 2001, Mendolusky wrote to Viola to further explore bargaining for a new collective bargaining agreement to supplant the extant contract due to expire February 19, 2002.[23] Mendolusky noted that terminating the existing contract was not acceptable but that it would have to remain in full force and effect during early negotiations. Mendolusky requested information from Respondent for bargaining and stated that pending unfair labor practice charges and the rescission of wages would not be effected by bargaining.

It appears that in June 2001 the parties agreed to enter into early negotiations for a successor collective-bargaining agreement in exchange for the Union dropping certain compliance issues in case 34-CA -9269. Thus, on June 7, 2001 it is uncontradicted that Carver proposed to Viola that the Union would stop demanding additional compliance issues if Respondent agreed to negotiate a new collective bargaining agreement. The following day Viola called Carver and agreed to sit down with the Union and meet initially for guidelines and to start negotiations. Viola said he was looking forward to negotiations. Viola's testimony that he understood that the parties were meeting to set guidelines if we were going to meet for early negotiations is contradicted by his statements in later conversations with Carver in which Viola said he was looking forward to negotiations. The parties initially agreed to meet on June 18, 2001 to discuss ground rules for negotiations but the meeting was rescheduled for July 3, 2001.

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[20] General Counsel's exhibit 18.

[21] Carver credibly testified without contradiction that she regularly reviewed correspondence from Respondent with bargaining unit employees who were stewards, negotiating team members and other employees at work.

[22] General Counsel's exhibit 19.

[23] General Counsel's exhibit 23.

The parties met on July 3, 2001. Present for the Union were Carver, Mendolusky, Union President John Flynn and unit employee negotiating committee members Angela Lamb, Linda Cox, and Helen Huskes. Present for Respondent were its attorney Arthur Kaufman (Kaufman), Viola and Thompson.

The meeting commenced with Mendolusky giving a history of the parties' relationship to date as well as the Union's goals for negotiations. Kaufman then stated that Respondent's purpose for meeting with the Union was to reinstate the wages rescinded pursuant to the Board's Order and if the wages were rescinded then Respondent would possibly consider going into negotiations. Kaufman admitted Respondent was wrong in granting wage increases without bargaining but that the Union had, "no right to cast stones at the sons for the sins of the fathers." Carver interrupted and said there had been an agreement to enter negotiations for a new contract. Kaufman said he, "didn't care about going into negotiations that they were there only to get the rescinded wages back and then he told us to make him an offer . . ." At that point the Union broke for a caucus and prepared a proposal to give Respondent that all employees receive wage increases.

Kaufman admitted that he said, ". . . if he wanted to open up negotiations—open up the contract now and start negotiations that as a sign of good faith he should—well the Union should pull back on the—they should allow us to put back into effect the wages hat were cut for the people pursuant to the NLRB's decision." Kaufman repeated that he said, ". . . if they wanted to start bargaining for a new contract before that date, then I would want the wages put back for the people that we took the wages away from and then we could start bargaining.

Viola admitted the purpose of the July 3 meeting was to set ground rules for early negotiations for a new collective bargaining agreement. He also admitted that Kaufman stated that a basic ground rule for bargaining, ". . . was that the wages had to be restored first before we could, we could, you know, move on. That was like the first step in moving forward."

Judge Edelman credited Carver's testimony of the July 3 meeting, finding it was corroborated by Cox and Medolusky. On the other hand Judge Edelman did not credit Kaufman's version of the July 3 meeting, concluding that Kaufman's testimony was evasive and that Viola corroborated not Kaufman but Carver's testimony. I will follow Judge Edelman's credibility resolution of the July 3 meeting testimony as it is supported by the weight of the evidence.

On August 14, 2001, Viola sent a memo[24] to all employees that noted the Labor Board notified Respondent that a deauthorization petition was being put on hold pending review of a claim by the Union that Respondent was not in compliance with the NLRB order, ". . . in that (Respondent) should have further reduced the wages of certain employees." Attached to the memo was a letter from Mendoluksy to the Region stating its position concerning compliance as well as a letter from Howard to the Region giving Respondent's position.

In September 2001, during an exchange over insurance for employee Dee Hammond, Carver told Viola that employees did not make a lot of money at Regency House. Viola replied, "We all know why we don't make a lot of money at Regency House." Carver said it was not fair to blame the Union that it was not the Union who broke the law. Carver later shared this conversation with other unit employees.

[24] General Counsel's exhibit 24.

On November 13, 2001, Kaufman wrote[25] to Mendolusky stating that Respondent was withdrawing recognition from the Union effective February 19, 2002, due to a majority of the members of the bargaining unit no longer wishing representation by the Union. Later on November 15, 2001 Viola wrote a memo to all employees stating that it was withdrawing recognition from the Union.[26] Respondent has refused to engage in further collective bargaining for a successor collective bargaining agreement.

On February 19, 2002, Respondent announced[27] that it was restoring the wages that had been rescinded in compliance with the Board's Order dated, April 9, 2001, in case 34-CA-9269, that it was granting other wage increases for RNs, LPNs, CNAs, Housekeeping, Laundry and Dietary employees and that it was implementing an adjustment for hiring rates. In addition Respondent admitted in its answer that it instituted new shifts and a weekend bonus. Respondent admitted all of these changes were made without giving notice to or bargaining with the Union.

3. The Requests for Information

On September 12 and October 3, 2001, the Union requested information concerning the hire date, job classification, job title as of 2/14/91, job description as of 9/12/01, and rates of pay as of 12/00, 2/14/01, and 9/12/01 of Jolanta Buczynski as well as addresses for four other employees.[28] On about October 3, 2001, Respondent handwrote a response to the Union's request for information providing the addresses of the four employees but only the date of hire and job classification for Buczynski.[29]

On about September 14, 2001, Carver made a written request of Respondent for information necessary for collective bargaining.[30] The Union requested 34 items. On October 11, 2001, Respondent replied in writing[31] to the Union's September 14 request for information and refused to provide information concerning turnover rates, a list of retirees with their names, ages, gender, type of retirement years of credited pension service, amount of pension, year of retirement and what options were exercised under the pension plan, the current weighted straight time hour rate for the bargaining unit, the average hourly earning, average weekly earnings and average weekly hours worked, the total compensations per hour, including straight time hourly rate and all fringe benefits exclusive of required costs, the amount of compensation to Respondent by owners of Canteen machines, the total wages paid to per diem employees annually since the date of the current collective bargaining agreement, the cost of fringe benefits, a list of all materials and chemicals by trade or code name and generic chemical name handled by or to which employees may be exposed in their work environment, the amount of total monthly insurance premium charged for the last three years and a list of persons retired since the last contract with date of hire, date of retirement amount of benefits and options exercised.

[25] General Counsel's exhibit 25.
[26] General Counsel's exhibit 26.
[27] General Counsel's exhibit 31.
[28] General Counsel's exhibit 28.
[29] Id.
[30] General Counsel's exhibit 27.
[31] General Counsel's exhibit 27A.

On October 10, 2001, the Union requested the Respondent provide information concerning Respondent's weekend bonus policy.[32] On October 24, 2001 the Union clarified and reiterated its information request of September 14, 2001.[33] On November 4, 2001,[34] the Union requested Respondent provide all verbal and written warnings issued to employees in the past two years, including the name of the person disciplined and for what reason. None of the information requested has been provided.

4. The Solicitation of Grievances

On about October 19 and 20, 2001, Trish Thomas, Director of Human Resources and Gina Pruhenski, Human Resources Service Manager of National Healthcare met with several groups of bargaining unit employees. In the meeting Carver attended Thomas asked employees if they had any concerns. Employees raised issues about eyeglass prescriptions, shift differentials, and temporary employees. Thomas ended the meeting by saying that she would take the employees' problems and try to do what she could with them. In the meeting attended by dietary aide Derrick Sabo (Sabo) Thomas asked employees what they would like to see happen. Sabo asked a question about vision insurance. Other employees asked about pay. In this meeting Thomas also explained the process by which employees could decertify the Union. Thomas said she would look into the issues the employees raised. LPN Linda Short (Short) attended another of the employee meetings. At this meeting Thomas said the reason for the meeting was to get employee suggestions to make Regency House a better place to work. After employees raised concerns about pay check information and staffing, Thomas said she would bring the employee concerns to the appropriate people and get back to the employees later. LPN Linda Cox was at yet another of Thomas' meetings. Thomas said she to listen to employee concerns. Employees discussed that there were too many temporary employees, too much paperwork and not enough time to get the job done. Employees raised questions about getting a raise. Thomas said she had heard what the employees had to say and would get back to them.

Thomas testified that it is her general practice at employee meetings that she cannot promise to fix anything but that she will take employee information back to management.

Pruhenski testified that she took word for word notes of the October 19 and 20, 2001 employee meetings.[35] However a cursory glance at the notes reflects that they are summaries that are replete with editorial comments and assumptions by Pruhenski. Moreover, she could not recall key facts concerning the meetings.

Neither Pruhenski nor Thomas expressly denied the employees' testimony concerning the October 19 and 20, 2001 employee meetings. While Thomas stated it was her practice to tell employees she could make no promises, she did not state she did so at the October 19 or 20, 2001 meetings.

Sometime shortly after February 19, 2002, Respondent announced in a memo[36] to employees that as a result of the October 19, 2001, employee meetings with Trish Thomas, Director of Human Resources and Gina Pruhenski, Human Resources Service Manager of

[32] General Counsel's exhibit 29.
[33] General Counsel's exhibit 39.
[34] General Counsel's exhibit 30.
[35] General Counsel's exhibit 36 and 37.
[36] General Counsel's exhibit 32.

National Healthcare, there would be changes to vision and dental insurance, that notification of the units regarding callouts had been resolved, that favoritism in scheduling had been looked into and that overtime would be shared equally, that staffing and assignments would be distributed fairly, that reductions in paperwork for the staff would be considered, that errors in paychecks had been considered.

B. The Analysis

As a means of imposing order upon this analysis, I will discuss the unfair labor practice allegations as they appear in the complaint.

1. Subparagraphs 12(b) through (g) of the complaint

General Counsel alleges that Respondent denigrated the Union by blaming the Union for demanding wage rescissions ordered by the Board in Case 34-CA-9269.

It is well established that a Respondent that engages in a plan of denigrating or disparaging a union with the goal of undermining employee support for the union violates Section 8(a)(1) of the Act. *Davis Electric Wallingford Corp.,* 318 NLRB 375 (1995); *Albert Einstein Medical Center*, 316 NLRB 1040 (1995); *J.L.M., Inc.,* 312 NLRB 304 (1993).

In the instant case it is necessary to look at the totality of Respondent's conduct to evaluate if Respondent engaged in a course of conduct aimed at undermining the employee support for the Union through disparagement or denigration.

After the Board ordered Respondent to rescind wage increases given to new employees and to extant employees making less than new employees and to bargain in good faith with the Union, Respondent embarked on a campaign to discredit and undermine the Union and blame them for the effect of Respondent's unlawful conduct. After the Union demanded that Respondent rescind the unlawful wage increases, Respondent, replied in writing through its counsel, Howard, on March 20, 2001 that in demanding enforcement of the Board Order the Union was harming its members. Respondent cast itself not in the role of lawbreaker but as champion of the bargaining unit members.

After Carver admonished Respondent's counsel for blaming the Union for the wage rescission, on April 6, 2001, Howard replied in writing again blaming the Union for punishing its members by having their wages reduced. Howard added,

> It is peculiar that while most unions pride themselves on helping the members they represent, your union has chosen as its legacy to punish it member by having their wages reduced.

Howard's letter was followed by an April 25, 2001 Viola memo to all employees blaming the Union for the wage rescission, attaching a copy of Carver's letter demanding compliance with the Board Order.

Again on April 30, 2001, Viola wrote to Carver and placed the responsibility for wage rescission on the Union. On May 4, 2001, Viola reiterated that it was the Union's responsibility for injuring employees stating, "If you draw such 'lines in the sand' you will only cause your members, the employees of this facility, to suffer." Viola then said he was fixing no blame but said, "The inescapable fact is that the rescission of increased wage rates and bonuses is neither the choice of Regency House nor the majority of our employees."

On May 10, 2001, Viola wrote to the Union:

> Your attempt to inflame an already tense situation accomplishes nothing and I choose not to be involved in those tactics. . . . However, I should point out that as someone who is the representative of the Regency House employees, you have an obligation to serve the interests of all the employees, not just the more senior employees of which you are one. . . As you know, the National Labor Relations Board gave the Union the right to insist that the wage increases given to the employees with less than five (5) years seniority be rescinded. . . . Accordingly, Regency will implement your request to rescind the wages of the affected employees. However, we should all be cognizant of the fact that this rescission presents an unexpected hardship for many of our employees who depend on a specific income level. Therefore, I am requesting that you agree to have the rescission announced now but effective July 1, in order to provide the affected employees adequate notice and opportunity to make necessary adjustments to their budgets. . . Be assured that when negotiations commence . . . Regency will make reinstitution of the wage increase, with retroactivity, a high priority.

It is apparent that Respondent again sought to lay blame for the unlawful wage increases on the Union and thereby undermine the Union's support among its members.

At the July 3, 2001 negotiation meeting, Respondent's counsel, Kaufman, admitted Respondent was wrong in granting wage increases without bargaining but consistent with Respondent's efforts to undermine the Union again blamed the Union for the wage rescission by saying that the Union had, "no right to cast stones at the sons for the sins of the fathers."

On August 14, 2001 Viola made a direct appeal to employees in the form of a memo suggesting the Union was further attempting to reduce employees' wages noting the Labor Board notified Respondent that a deauthorization petition was being put on hold pending review of a claim by the Union that Respondent was not in compliance with the NLRB order, ". . . in that (Respondent) should have further reduced the wages of certain employees."

In September 2001, during an exchange over insurance for employee Dee Hammond, Carver told Viola that employees did not make a lot of money at Regency House. Viola replied, "We all know why we don't make a lot of money at Regency House."

Repeated attempts to blame the Union for employees' loss of money has been held to be denigration in violation of Section 8(a)(1) of the Act. *Billion Dollar Oldsmobile-Toyota*, 260 NLRB 745, 754 (1982). Each of the letters and oral statements detailed above was directed to bargaining unit employees. Contrary to its assertion[37], Respondent's oral statements, letters and memos had widespread circulation among bargaining unit employees with the intended effect of creating heightened animosity, dissatisfaction and hostility towards and discouraging support for and causing disaffection from the Union and violated Section 8(a)(1) of the Act as alleged in subparagraphs 12(b) through (g) of the complaint. *Parkview Furniture Mfg. Co.*, 284 NLRB 947 (1987).

[37] There is no evidence that the denigrating documents and comments were not communicated to the petition signers. In fact two denigrating memos issued by Viola were sent to all employees.

2. In subparagraph 12(a) of the complaint

Counsel for the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by denigrating the Union by delaying implementation of the Union's request to rescind the wage increases as required by the Board Order from April 25, 2001 until mid May 2001.

On April 9, 2001 the Board issued its Order in Case 34-CA-9269 adopting the February 21, 2001 decision of administrative law judge Michael Marchionese finding that Respondent violated Section 8(a)(1) and (5) of the Act by granting wage increases to bargaining unit employees and ordered Respondent to rescind the wage increases upon the Union's request.

On April 12, 2001 the Union formally demanded that Respondent rescind the wage increases unlawfully granted. On May 20, 2001 Respondent implemented the wage rescission after a period of negotiation between Respondent and the Union over whether to hold the wage rescission in abeyance in exchange for early bargaining for a new collective bargaining agreement.

Counsel for the General Counsel contends that by seeking delay of the wage rescission, Respondent denigrated the Union by making it look weak in the eyes of bargaining unit employees.

The alleged delay covered a period of 38 days. I am not persuaded that the mere passage of five weeks, that included delay attributed to the Union's consideration of Respondent's proposal to bargain, to be the essence of Respondent's denigration of the Union. As discussed above, Respondent's effort to make the Union the scapegoat for the bargaining unit employees' loss of wages pursuant to Respondent's unlawful conduct as found by the Board was the conduct calculated to diminish the Union in the employees' eyes. It is not the mere passage of time that made the Union appear impotent in the eyes of bargaining unit employees but rather it was Respondent's campaign of shifting responsibility for the wage rescission from itself to the Union. Moreover, I find no case law on point that establishes the mere passage of 38 days in implementing a Board Order constitutes denigration of a union. I will recommend dismissal of this portion of the complaint.

3. Paragraph 13 of the complaint

General Counsel alleges that on or about July 3, 2001 Respondent insisted, as a condition of bargaining with the Union for a successor collective-bargaining agreement, that the Union agree to restore the wage increases that had been rescinded effective May 14, 2001 pursuant to the Board Order.

Section 8(d) of the Act imposes upon employers and unions the mutual obligation to:

> Meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement . . .Provided, That where there is in effect a collective bargaining agreement . . .no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification-
>
> (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof. . .

The Board has held that there is nothing to prevent the parties from mutually agreeing to reopen a contract to start early negotiations and, "If they do agree on an early reopening, they are subject to the same standards of good-faith bargaining as if the contract expressly provided for such opening." *General Electric Company,* 173 NLRB 253, 256 (1968); enforced as modified *General Electric* Co., v. NLRB, 412 F. 2d 512 (Second Cir. 1969); *Detroit Newspaper Agency,* 326 NLRB 700, fn 8 (1998) rev'd on other grounds *Detroit Typographical Union No. 18 v. N.L.R.B.,* 216 F.3d 109, (D.C.Cir. 2000).

While Respondent was under no obligation to enter into early negotiations for a successor collective bargaining agreement, the record is clear that it expressly agreed to do so in exchange for the Union's concession that it would not pursue further rescission remedies in compliance with the Board's Order in Case 34-CA-9268. Having so committed itself to early negotiations, Kaufman's insistence that the Union had to agree to restore the wages rescinded pursuant to the Board's Order before bargaining could commence, evidenced bad faith and a violation of Sections 8(a)(5) and 8d) of the Act as a party may not unilaterally impose conditions upon bargaining. *Caribe Stable Co*., 313 NLRB 877, 888-890 (1994); *Laredo Packing Co*., 254 NLRB 1, 18-19 (1981).

4. Paragraph 14 of the complaint

General Counsel alleges that Respondent, by Thomas, violated the Act on or about October 19, 2001, at its facility by:

a. Soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they rejected the Union as their bargaining representative.

The Board has held that in cases involving the solicitation of grievances by an employer in the context of a union organizing campaign that it is not so much the solicitation of the grievances that constitutes the coercive conduct but rather the implicit promise to remedy them. *Sacramento Recycling & Transfer Station,* 345 NLRB No. 39 (2005); *Doane Pet Care, DPC,* 342 NLRB No. 115 fn 2 (2004).

Morover, the Board adheres to the proposition that granting or promising benefits during an organizing campaign are meant to improperly influence employees' choice in the selection of a representative. In order to validate the promise of benefits an employer must demonstrate a legitimate business reason for the timing of a promise or grant of benefits during an organizing campaign. *Pacific FM, Inc., dba KOFY TV-20*, 332 NLRB 771 (2000). See also *McAllister Towing & Transp. Co*., 341 NLRB No. 48 (2004).

The window period for filing a decertification petition among Respondent's bargaining unit employees was October 23- November 21, 2001. Counsel for the General Counsel contends that since the petition[38] to decertify the Union was being circulated among bargaining unit employees between October 18 and November 6, 2001, the circumstances were analagous to an organizing campaign where the Board prohibits an employer from improperly influencing employees' choice in the selection of a representative. The evidence reflects that Respondent was aware of the decertification petition and encouraged it. Thus, at the October 19, 2001

[38] Respondent's exhibit 1. A decertification petition was filed on November 13, 2001 in case 34-RD-289.

meeting with employees Thomas explained to employees the process of decertification. In addition Thomas explained the decertification process to supervisors at about the same time. It is apparent from Viola's testimony that as early as May 2001 he was aware that bargaining unit employees were dissatisfied with the Union and wanted to get rid of it and said in testimony that:

> But there is only, there is only about 80 or 85 people in the bargaining unit. I had 38 on the list. That means I only needed six more that I knew of, that weren't on the list that would have put me over.

Viola's testimony unmistakably establishes that he knew in May 2001 that he needed only six more employees for a decertification petition to be filed. Thus, Thomas' October 2001 meetings with employees, the timing of the meeting immediately before the window period for filing a decertification petition, her solicitation of grievances and her explanation of the decertification process to both employees and management, reflect that Respondent was well aware that it could influence bargaining unit employees selection of a representative[39]. I find there was no past practice of soliciting employee grievances by Respondent nor was there a legitimate business purpose in soliciting employee complaints about their working conditions. I find that Thomas solicitation of grievances at the October 19 and 20, 2001 employee meetings violated Section 8(a)(1) of the Act.

b. Bypassing the Union and dealt directly with its employees in the Unit concerning wages, hours, and terms and conditions of employment.

The duty to bargain compels an employer to recognize, "that the statutory representative is the one with whom [the employer] must deal in conducting bargaining negotiations, and that it can no longer bargain directly or indirectly with the employees." *General Electric Co*., 150 NLRB 192, 194 (1964). See also *Dayton Newspapers Inc.,* 339 NLRB No. 79 (2003). The Board has held that solicitation of grievances and direct dealing with employees over working conditions erodes the position of the designated bargaining representative and violates Section 8(a)(1) and (5) of the Act. *Allied Signal, Inc*., 307 NLRB 752, 753 (1992).

Thomas October 19-20, 2001 meetings with employees where she solicited grievances and implied that they would be remedied was direct dealing with bargaining unit employees concerning terms and conditions of employment and violated Section 8(a)(1) and (5) of the Act.

5. Paragraph 15 of the complaint

It is alleged that the Union made the following requests for information:

[39] That the purpose of Thomas' October 19-20, 2001 meetings with employees was for the purpose of soliciting and remedying grievances concerning terms and conditions of employment is confirmed in Viola's February 19, 2002, memo to employees that said as a result of the October 19, 2001, employee meetings with Trish Thomas, Director of Human Resources and Gina Pruhenski, Human Resources Service Manager of National Healthcare, there would be changes to vision and dental insurance, that notification of the units regarding callouts had been resolved, that favoritism in scheduling had been looked into and that overtime would be shared equally, that staffing and assignments would be distributed fairly, that reductions in paperwork for the staff would be considered, that errors in paychecks had been considered.

a. The September 14, 2001 request for information necessary for collective bargaining.

The Supreme Court has held that employers have a duty to furnish relevant information to a union representative during contract negotiations. *NLRB v. Truitt Manufacturing Co*., 351 U.S. 149 (1956). This obligation extends beyond contract negotiations and applies to administration of the contract, including grievance processing. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *Ormet Aluminum Mill Products, Inc*., 335 NLRB 788, 790 (2001). In order for the obligation to furnish information to attach there must be a request made and the information requested must be relevant to the union's collective bargaining need. *Saginaw Control & Engineering, Inc*., 339 NLRB No. 76 (2003). An ambiguous request may not be denied by an employer rather the employer is under an obligation to seek clarification. *International Protective Services, Inc*., 339 NLRB No. 75 (2003).

With respect to this request for information, it is clear that the information sought was clearly relevant to the conduct of collective bargaining for a new contract. Despite its October 11, 2001 response to provide limited information, no information was provided to the Union.

b. The September 12 and October 3, 2001 requests for information regarding Jolanta Buczynski.

Other than her job tile and hire date, Respondent provided none of the other information requested. The information was plainly relevant in the Union's responsibility for contract administration.

c. The October 10, 2001 request for information concerning bonus policy when employees work four consecutive weekends.

None of the information was provided to the Union. The information was relevant to the Union's obligation in contract administration.

d. The November 4, 2001 request for all verbal and written warnings for the last two years, with employees' names and the offense for which the warning was given.

No information was supplied concerning this request relevant to administration of the extant contract.

All of the information requested above was relevant to collective bargaining or contract administration. Respondent's contention that it was precluded from providing the requested information due to the petition it received from employees indicating they no longer wished representation by the Union is misplaced. Despite the petition, the Union had an ongoing obligation to represent unit employees and to administer the extant collective bargaining agreement. Moreover, Respondent had ample time to respond to the request for information of September 14, 2001, for the purpose of entering into collective bargaining for a successor contract. Its refusal to provide the information requested in complaint subparagraphs 15(a) through (d) violated Section 8(a)(1) and (5) of the Act as alleged.

6. Paragraphs 18 and 19 of the complaint

It is alleged that on or about November 13, 2001 Respondent withdrew recognition of the Union as the exclusive bargaining representative of the Unit employees effective February 19, 2002, and since November 14, 2001 has refused to bargaining with the Union

concerning the terms of a collective-bargaining agreement to succeed the agreement expiring on February 19, 2002.[40]

In *Levitz Furniture*, 333 NLRB 717 (2001), the Board established rules for determining when an employer may lawfully withdraw recognition from a union. The Board held that an employer may "unilaterally withdraw recognition only by a showing that the union has, in fact, lost support of a majority of the employees in the bargaining unit." [41] An employer may lawfully withdraw recognition from a union only when it has not committed unfair labor practices that tend to undermine the employees' support for the union.[42]

In the instant case, I have found that Respondent committed numerous unfair labor practices including denigration of the union, direct dealing with employees, solicitation of grievances and refusal to bargain. These kinds of unfair labor practices have been found by the Board to have the tendency to undermine bargaining unit employees' support for the union and meet the four part test of *Master Slack Corp*., 271 NLRB 78 (1984). *Kentucky Fried Chicken,* 341 NLRB 69 (2004); *Quazite Corp*., 315 NLRB 1068 (1994), enforcement denied 87 F. 3d 493 (D.C. Cir. 1996); *Detroit Edison Co.*, 310 NLRB 564 (1993); *Suzy Curtains, Inc*., 309 NLRB 1287 (1992), remanded 19 F.3d 11 (4th Cir. 1994), decision supplemented 318 NLRB 391 (1995), enforced 106 F. 3d 391 (4th Cir. 1997).

In *Master Slack* at 84, in determining if employer unfair labor practices tended to undermine bargaining unit support for the union, the Board has said it will look at the length of time between the unfair labor practices and the withdrawal of recognition, the nature of the violation, the tendency of the violation to cause employee disaffection and the effect of the unlawful conduct on employee morale, organizational activity and membership in the union.

Here the unfair labor practices involving disparagement of the Union occurred on a continuing basis from March 2001 through September, 2001. The disparagement was followed, while the petition to remove the Union was being circulated, with direct dealing and solicitation of grievance unfair labor practices in October 2001. These unfair labor practices formed a continuum up to the signing of the petition to remove the Union and cannot be viewed in isolation.

The nature of the unfair labor practices is such that it goes to the heart of the relationship between the Union and its members. Respondent embarked on a clear course designed to create conflict between bargaining unit employees and the Union by assigning blame for the unlawful wage increases to the Union rather than Respondent. The solicitation of grievances and direct dealing likewise were designed to demonstrate the ineffectiveness of the Union and create discord among unit employees.

The unfair labor practices, described above, were designed to and did in fact create employee dissatisfaction and discord. Thus, the tendency of these unfair labor practices by

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[40] In its supplemental post hearing brief dated September 29, 2006, the Charging Party contends that the signatures on the decertification petition presented to Respondent in November 2001 was never properly authenticated by Respondent. In finding that the petition was tainted by Respondent's unfair labor practices, the authentication of the signatures is rendered moot.

[41] *Levitz, supra* note 229.

[42] Id. at note 1.

their nature caused employee dissatisfaction, resulting in the petition seeking the Union's removal as bargaining representative. All four *Master Slack* requirements are thus satisfied.

In view of Respondent's unremedied unfair labor practices which have undermined bargaining unit members' support for the Union, I find Respondent could not lawfully withdraw recognition from the Union on November 13, 2001, effective February 19, 2002. By doing so, Respondent has violated Section 8(a)(1) and (5) of the Act as alleged. Moreover, by refusing to bargain with the Union over a successor collective bargaining agreement, Respondent has further violated Section 8(a)(1) and (5) of the Act.

7. Paragraph 20 of the complaint

General Counsel alleges that since on or about February 19, 2002, Respondent has implemented the following changes in the terms and conditions of employment of Unit employees:

(a) instituted a weekend bonus;
(b) increased general wages and starting rates;
(c) restored wage increases which had been rescinded in compliance with the Board's Order in Case No. 34-CA-9269; and
(d) instituted new shifts.

After Respondent unlawfully withdrew recognition from the Union on November 13, 2001, effective February 19, 2002, it implemented changes to bargaining unit terms and conditions of employment including institution of a week end bonus, increased wages, restoration of the wages increases rescinded in compliance with the Board Order in Case 34-CA-9269 and new shifts. These changes were admitted or stipulated to by Respondent. I find that these unilateral changes were made without affording the Union notice or opportunity to bargain and violate Section 8(a)(1) and (5) of the Act.

Conclusions of Law

Respondent has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act by denigrating the Union, by soliciting grievances from bargaining unit employees, by bypassing the Union and dealing directly with bargaining unit employees concerning terms and conditions of employment, by withdrawing recognition from the Union, by refusing to bargain with the Union concerning a successor contract, by making unilateral changes to employees' terms and conditions of employment and by refusing to provide information to the Union.

The above are unfair labor practices affecting commerce within the meaning of Sections 2(6), (7) and (8) of the Act.

Remedy

In its post-hearing briefs, the Charging Party requests a broad order, costs and fees and an extended period of no less than one year of bargaining before the Union's majority status may be challenged.

Where an employer has unlawfully withdrawn recognition from an incumbent union, the Board requires the employer to resume bargaining for a reasonable period of time before the union's majority status can be challenged. In *Lee Lumber & Building Material Corp*., 334 NLRB

399 (2001), the Board found that a period of no less than 6 months nor more than 12 months would be a reasonable period of time.

In *Lee Lumber* at 399, the Board stated that:

> Whether a "reasonable period of time" is only 6 months, or some longer period up to 1 year, will depend on a multifactor analysis. Under that analysis, we shall consider whether the parties are bargaining for an initial agreement, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time elapsed since the commencement of bargaining and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties are to agreement, and the presence or absence of a bargaining impasse.

The ultimate issue in deciding what constitutes a "reasonable period of time" is "whether the union has had enough time to prove its mettle in negotiations, so that when its representative status is questioned, the employees can make an informed choice, without the taint of the employer's prior unlawful conduct."[43]

In the instant case the parties are not bargaining for an initial contract, there has been no bargaining and no impasse, and there is no evidence that the issues are particularly difficult or complex. The fact that an inordinate period of time has elapsed since Respondent withdrew recognition and refused to bargain with the Union, under the circumstances of this case, is not entirely Respondent's fault. Accordingly, I recommend that Respondent recognize and bargain with the Union for a period of no less than six months, during which time the Union's majority status may not be challenged.

While the Board has authority to assess Respondent with litigation costs and union expenses, it will do so only where the Respondent's defenses are frivolous. *Pratt Towers, Inc*., 338 NLRB 61 (2002). Like the judge in *Pratt Towers*, I am not persuaded that Respondent's defenses were frivolous. As long as the defenses raised by the Respondent are debatable and not frivolous, the remedy of litigation costs and union expenses is inappropriate. Under this standard, I find that extraordinary remedies in this case are unwarranted.

The Union also seeks a broad Order herein requiring the Respondent to cease and desist from violating the Act in "any other manner." The Board in *Hickmott Foods,* 242 NLRB 1357 (1979) stated that an order is warranted only when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights

In Case 34-CA-9269 the Board found that Respondent unilaterally changed terms and conditions of employment by granting wage increases. In this case the Respondent again made unilateral changes to employees' terms and conditions of employment, including restoring the wage increases the Board had ordered rescinded, bargained in bad faith, disparaged the Union, solicited grievances dealt directly with employees, unlawfully withdrew recognition from the Union, made unilateral changes to employees' terms and conditions of employment and refused to provide information. I find that Respondent has demonstrated a proclivity to violate the Act by repeatedly making changes in employees' terms and conditions of employment thus undermining the Union's support among the bargaining unit and thus meets the standard under Hickmott warranting a broad order. Therefore, because of the nature of the unfair labor

[43] *Lee Lumber, supra* at page 405.

practices found here, and in order to make effective the interdependent guarantees of Section 7 of the Act, I recommend that the Respondent be ordered to refrain from in any other manner abridging any of the rights guaranteed employees by Section 7 of the Act.

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[44]

ORDER

The Respondent, Regency House of Wallingford, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain in good faith with International Chemical Workers Union Council/UFCW, Local 560C, AFL-CIO, Union, as the exclusive collective bargaining representative in the following appropriate unit:

> All full-time and regular part-time registered nurses, licensed practical nurses and service and maintenance employees employed by Respondent, including certified nursing assistants, physical therapy aides, dietary aides, and housing and laundry employees; but excluding RN supervisors, office clerical employees, cooks, and guards, other professional employees and other supervisors as defined in the Act.

(b) Soliciting grievances and promising to remedy those grievances in order to discourage employees from engaging in union or other protected-concerted activity.

(c) Bypassing the Union and dealing directly with bargaining unit employees concerning wages, hours and other terms and conditions of employment.

(d) Denigrating the Union by written and oral communication to bargaining unit employees.

(e) Refusing to bargain with the Union over a successor collective-bargaining agreement by insisting as a condition of bargaining that the Union agree to restore wages rescinded pursuant to a prior Board Order.

(f) By refusing to bargain with the Union by making unilateral changes to bargaining unit employees' terms and conditions of employment without affording the Union notice or opportunity to bargain over the changes.

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[44] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(g) By refusing to bargain with the Union by refusing to furnish the Union with information relevant and necessary to the Union's performance of its duties as the exclusive collective bargaining representative of bargaining unit employees.

(h) In any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain in good faith with the Union as the exclusive collective bargaining representative of the employees in the above appropriate unit for a reasonable period of time which shall be no less than six months and on request, meet and bargain in good faith with the Union as the collective bargaining representative of its employees in the described appropriate unit concerning terms and conditions of employment and, if agreements are reached, embody the agreements in a signed collective bargaining agreement.

(b) Upon request of the Union rescind all unilateral changes made after November 13, 2001, including wage rates rescinded pursuant to the Board's Order in Case 34-CA-9269, weekend bonuses, increased general wages and starting rates and new shifts.

(c) Provide the Union with the information requested in its information requests of September 12, 14, October 3, 10, and November 4, 2001.

(d) Within 14 days after service by the Region, post at its facilities in Wallingford, Connecticut, copies of the attached notice marked "Appendix."[45] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Company's authorized representative, shall be posted by the Company immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business, closed a facility involved in these proceedings, or has laid off employees, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since March 20, 2001.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C, November 21, 2006.

_____
John J. McCarrick
Administrative Law Judge

[45] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted Pursuant to an Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives or bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to recognize or bargain collectively with International Chemical Workers Union Council/UFCW, Local 560C, AFL-CIO, Union, as the exclusive collective bargaining representative of its employees in the appropriate unit:

All full-time and regular part-time registered nurses, licensed practical nurses and service and maintenance employees employed by Respondent, including certified nursing assistants, physical therapy aides, dietary aides, and housing and laundry employees; but excluding RN supervisors, office clerical employees, cooks, and guards, other professional employees and other supervisors as defined in the Act.

WE WILL NOT unilaterally make changes in bargaining unit employees' terms and conditions of employment without first affording the Union notice or opportunity to bargain.

WE WILL NOT refuse to bargain in good faith for a successor collective-bargaining agreement by insisting as a condition of bargaining that the Union agree to restore wages rescinded in compliance with the Board's Order in Case 34-CA-9269.

WE WILL NOT refuse to bargain in good faith with the Union by refusing to furnish the Union with information necessary and relevant to its duties as collective-bargaining representative of bargaining unit employees.

WE WILL NOT solicit and promise to remedy grievances from bargaining unit employees in order to discourage their rights protected under Section 7 of the Act.

WE WILL NOT bypass the Union and deal directly with bargaining unit employees concerning terms and conditions of employment.

WE WILL NOT denigrate the Union by oral and written communications with bargaining unit employees.

WE WILL NOT in any other manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain in good faith with the Union as the exclusive collective bargaining representative of its employees in the appropriate unit:

All full-time and regular part-time registered nurses, licensed practical nurses and service and maintenance employees employed by Respondent, including certified nursing assistants, physical therapy aides, dietary aides, and housing and laundry employees; but excluding RN supervisors, office clerical employees, cooks, and guards, other professional employees and other supervisors as defined in the Act.

WE WILL bargain in good faith with the Union as the exclusive collective bargaining representative of the employees in the above appropriate unit for a reasonable period of time which shall be no less than six months and on request, meet and bargain in good faith with the Union concerning terms and conditions of employment and, if agreements are reached, embody the agreements in a signed collective bargaining agreement.

WE WILL upon request of the Union rescind all unilateral changes made after November 13, 2001, including wage rates rescinded pursuant to the Board's Order in Case 34-CA-9269, weekend bonuses, increased general wages and starting rates and new shifts.

WE WILL provide the Union with the information requested in its information requests of September 12, 14, October 3, 10 and November 4, 2001.

REGENCY HOUSE OF WALLINGFORD, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

280 Trumbull Street, 21st Floor
Hartford, Connecticut 06103-3503
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THISNOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.

THIS NOTICE AND THE DECISION IN THIS MATTER ARE PUBLIC RECORDS

Any interested individual who wishes to request a copy of this Notice or a complete copy of the Decision of which this Notice is a part may do so by contacting the Board's Offices at the address and telephone number appearing immediately above.